The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eleventh to fourteenth periodic reports of Chile (continued) (CERD/C/337/Add.2; HRI/CORE/1/Add.103)

1. At the invitation of the Chairman, the members of the delegation of Chile resumed their places at the Committee table.

2. Mr. SHERIFIS said that he was impressed by the quality of the report of Chile and by the delegation's response to the Committee's earlier questions and comments. It was gratifying that the Government had made the declaration under article 14 of the Convention, as suggested by the Committee, and he hoped that it might likewise accept the amendments to article 8, paragraph 6. He also urged the authorities to ensure the widest possible dissemination of information about the Convention, the work of the Committee and the latter's conclusions and recommendations.

3. He drew attention to the Committee's General Recommendation XIII on the training of law enforcement officials and General Recommendation XVII on the establishment of national institutions to facilitate the implementation of the Convention. With regard to the latter, he wondered whether such an institution existed in Chile and, if not, invited the Government to consider establishing one.

4. He would like to have more details about the extent to which the members of indigenous communities took part in the work of parliament, the civil service and public offices and institutions in general. He particularly welcomed the Government's exemplary initiatives, noted in paragraph 16 of the report, in hosting meetings of United Nations human rights bodies. The information provided in paragraph 18, however, although refreshingly frank like the rest of the report, contained a misuse of terminology. Prejudice and discrimination against Indians was not xenophobia; the Indians were indigenous inhabitants, not foreigners. The use of that term by a university department was a striking blunder.

5. Mr. SHAHI said that he, too, appreciated the frank, objective report, whose candour was typified by paragraph 4 relating to Chile's historical background. The report reflected the Government's moral courage and augured well for the Chilean people's prospects. He was particularly struck by the contents of paragraph 13, relating to the Indigenous Development Corporation (CONADI) set up pursuant to Act No. 19,253 of 1993, and by paragraph 18, mentioned by Mr. Sherifis, which in any case was evidence of the concern to educate Chilean society with a view to eliminating intolerance and discrimination and to fostering protection of the rights of all population sectors.

6. With regard to article 2 of the Convention, he applauded the adoption of the Indigenous Act, described in paragraphs 30 to 32 and again in paragraph 75 of the report. But the description in paragraph 77 of legal action in indigenous disputes and the account in paragraph 78 of proceedings instituted

by a Korean woman on the grounds of racial discrimination failed to show whether the Convention, and article 5 (f) in particular, had actually been invoked by the higher courts; nor was there any information about possible conciliation and settlement measures as an alternative to action at law. He hoped, therefore, that the next periodic report would shed more light on how domestic legislative measures and judicial procedures reflected article 4 of the Convention, in particular.

7. The CHAIRMAN, speaking as a member of the Committee, said that he too admired the frankness of the reporting - something not encountered in the case of all States parties - and the way in which problems were being openly faced. Impressed as he was by Chile's admission of past wrongs, especially against the indigenous population, he asked whether Chile might consider taking the next step and offer an apology and provide for restitution or compensation for the land and other property taken from the indigenous population. Although such action would clearly take time, by taking such steps Chile could become a pioneering nation in Latin America and enhance its early democratic traditions. Replying to an observation by Mr. FERRERO COSTA, he agreed that, in the case of many countries, the question of compensation could involve not only current Governments but former colonial and other occupying Powers, although experience had shown that compensation was seldom forthcoming from such Powers.

8. Mr. SALINAS (Chile) said that his delegation was grateful for the Committee members' questions and comments and appreciated the praise bestowed on the report, especially with regard to the situation of indigenous peoples and the Government's efforts to restore a healthy balance of tolerance in a nation of considerable cultural diversity.

9. Ms. BERTONI (Chile), speaking on land disputes involving the Mapuche people which had come before the courts, said that the Committee would be provided with a list of all such cases, most of them in the Araucanía region. She asked for the names of the individuals members had mentioned, so that she could find out the full details of their cases. She did, however, have some information for the Committee. In only one of the six cases brought to trial had six Mapuches been sentenced to short terms of imprisonment as a result of events in Araucanía, and they had now been released under surveillance. No Mapuche was currently being held in detention following the events of the previous year.

10. Members had mentioned an individual who had been arrested on 9 May 1999 on his return from abroad. The individual in question had been arrested by authority of a court order dating from 5 May in connection with a case of land usurpation. His arrest was nothing to do with the fact that he had attended an international meeting on the rights of the Mapuche people. His case has been tried, and he had been provisionally released. In another case mentioned by members, the individual concerned had been arrested for theft and criminal damage on 20 March 1999 by the Carabineros (paramilitary police). However, he had been released for lack of evidence on 22 March and his case had thus never come to court.

11. Turning to the implementation of the international human rights treaties to which Chile was a party, she said that, as was stated in the core document

(paras. 68 to 70), on completion of the necessary procedure an international treaty came into force as a law of Chile and could be invoked before the courts and other authorities as if it were domestic legislation. International human rights treaties, especially the American Convention on Human Rights and the International Covenant on Civil and Political Rights, were increasingly cited in cases coming before the higher courts (the Supreme Court of Justice and the appeal courts). For instance, in the much publicized racial discrimination case won by a Korean woman immigrant in 1993 (CERD/C/337/Add.2, para. 63), the Supreme Court had clearly condemned racial discrimination, although it had cited the International Covenant on Civil and Political Rights and the American Convention on Human Rights, rather than the Convention. In that case, those instruments had been treated as though they were the domestic legislation of Chile.

12. Members had pointed out, correctly, that infringements of the Convention, when it was directly applied in Chilean law, were liable to civil, not criminal penalties. Further legislative measures would be needed to include offences infringing the Convention in the Penal Code. In the case of the Korean immigrant mentioned above, however, a civil penalty had been appropriate, since the defendant, the owner of a health club, had been prosecuted under consumer protection laws for excluding the plaintiff from the club. The original decision of the local court had been confirmed by both the appeal court and the Supreme Court. As to the publicity given to the judgement, the case had attracted considerable media and public interest and had become an exemplary case of conviction for racial discrimination which would be cited frequently in the future. The higher courts had also considerably increased the fine payable by the defendant.

13. International human rights treaties thus had the same authority as the Constitution, but there were still questions of jurisprudence and doctrine to be settled. The issue was a very delicate one because of the many human rights violations which had taken place under the former military regime. However, the attitude taken by the courts had become more positive in recent years and international human rights treaties were beginning to be applied in court judgements.

14. The National Commission on Truth and Reconciliation had investigated the serious human rights violations which had taken place during the military regime of 1973-1990. The National Corporation for Compensation and Reconciliation was responsible for implementing its recommendations, and the Corporation had published a document entitled "Constitution, treaties and essential rights", which brought together all the international human rights treaties which had been incorporated into Chile's own legislation: the document had been distributed to public authorities and the judiciary. In March 1999, a special edition of the Official Gazette (Diario Oficial) had been published, containing all the human rights treaties and instruments which were currently in force in Chile, which was intended for civil servants, judges and the general public. The document was considered a major step forward in the dissemination of human rights treaties. She would pass on to the relevant authorities, including CONADI, the Committee's suggestion that the Convention might be translated into indigenous languages.

15. Regarding steps taken by the Government to publicize its fourteenth periodic report in Chile, she said that the Office of the Human Rights Adviser of the Ministry of Foreign Affairs had distributed the report to non-governmental organizations (NGOs) concerned with human rights and the rights of indigenous peoples, as well as bodies concerned with discrimination, including the Chilean Human Rights Commission and the Christian Churches' Social Assistance Foundation. At a meeting attended by some of the NGOs, the text of the Convention and the fourteenth periodic report had been distributed and the Committee's procedure for examining the report had been explained. The Government would pass on the Committee's comments to the NGOs.

16. Mr. SALINAS (Chile), speaking on the subject of reforms to the Constitution, said that the Government had been trying since 1991 to change the Constitution in order to improve the status of indigenous peoples. The proposed reforms were still before the National Congress, together with the Government's proposal for ratification of the International Labour Organization's Indigenous and Tribal Peoples Convention, 1989 (No. 169), but, on the initiative of the President of the Republic, the process of adoption was now to be expedited.

17. Turning to article 4 of the Convention, he said that there was no constitutional provision specifically prohibiting racial discrimination. However, the part of the Constitution which dealt with the right to freedom of association declared unconstitutional all groups and organizations which sought to establish a totalitarian regime or which used or incited others to use violence as a means of political action. It was for the Constitutional Court to rule that they were unconstitutional. The National Security Act covered crimes against public order, including the propagation of doctrines, systems or methods which advocated crime or violence in any form in order to bring about political, economic or social change. Under the Law against Abuse of Publicity, it was an offence to make broadcasts or issue publications, in any medium, which incited people to hatred, hostility or denigration of persons or communities on the grounds of their race or religion.

18. A bill on racial and ethnic discrimination was under consideration. It proposed a new article of the Penal Code, which would define the crime of discrimination on the grounds of race, religion or national or ethnic origin. It was also planned to change article 8 of the Indigenous Act to increase the penalties for acts of discrimination against indigenous people. It was further intended to change the Law against Abuse of Publicity to cover publications or broadcasts which incited people to hatred, hostility or denigration on the grounds of national or ethnic origin.

19. Turning to the Indigenous Act, he said that, in general, custom (costumbre) was not accepted as having the force of law unless the law so stated. However, the Indigenous Act stated specifically that customs should have the force of law provided that they were compatible with the Constitution. In criminal cases, customs could be cited as an excusing or attenuating circumstance. In the Indigenous Act, customs could not, strictly speaking, be adduced as formal evidence, although they could be taken into account in all types of legally recognized testimony, particularly the expert reports of CONADI. They were accepted as a means of conciliation for the resolution of land disputes.

20. A simplified procedure had been introduced to make it easier for indigenous people to gain access to justice and make court procedures more flexible in cases relating to the ownership, division, administration, exploitation and use of indigenous land and laws and contracts affecting it. Such cases were presided over by a judge from the commune where the disputed land was situated.

21. Turning to the question of Korean and Peruvian immigration, he said that immigrants from both those groups were governed by the same laws as all other immigrants. The influx of Korean immigrants had slowed considerably in recent years. The only case of racial discrimination which had been recorded was the one referred to by Ms. Bertoni and described in paragraph 63 of the report, and no complaints had been received from the Korean consular and diplomatic authorities regarding discrimination against Korean nationals. There were far more Peruvian immigrants: an estimated 60,000 Peruvians lived in Chile. In May 1999, 16,798 Peruvian citizens had been in possession of residence permits, which represented 73.7 per cent of all residence permits throughout the country. A large number of illegal Peruvian immigrants were also thought to be living in Chile, and the immigration authorities were trying to regularize their situation.

22. There was a special situation in the border region of Arica, as described in paragraph 72 of the report. Under an agreement between Chile and Peru, people could move freely within a limited area on either side of the border without a passport or visa, but merely with a "safe conduct" pass (salvoconducto) valid for seven days at a time. Peruvian immigrants thus regularly travelled back and forth across the border to work in Arica.

23. The labour laws applied to all migrant workers, whether they were working legally or illegally. Discrimination on grounds of race, colour, sex and trade union or political affiliation was prohibited. There were regulations stating that 85 per cent of an enterprise's workers should be Chilean citizens, but an exception was made in certain special cases.

24. Education in Chile was free and compulsory up to the eighth year of school. Public and private systems of education coexisted and the State granted subsidies to both municipal and private primary schools. The health care system also consisted of public and private sectors. The public health service was freely accessible to all people residing in Chilean territory, including both legal and illegal immigrants.

25. The Government's interest in providing human rights training for law enforcement officials was reflected in the introduction of human rights courses into the curricula of the Carabineros and the Police Department training academies and also for prison staff (Gendarmería). The teachers on such courses were often distinguished human rights specialists with extensive experience. More time was needed to evaluate the effect of human rights training on staff conduct; however, the process of evaluation had begun and would continue in the future.

26. He confirmed his Government's willingness to continue to provide the resources it had pledged to finance the Committee's activities, despite the

current economic crisis in the country; his delegation would strongly urge its authorities to consider meeting the Committee's concerns about article 8, paragraph 6 through a specific contribution in future.

27. The CHAIRMAN specified that Chile was being requested merely to ratify the General Assembly's amendment to article 8 of the Convention to the effect that the Committee's expenses would be covered by the regular budget.

28. Mr. SALINAS (Chile), assured the Committee of Chile's commitment to its financial obligations. Clarifying the statement in paragraph 23 of the report, he stressed that it was not just a matter of good intentions but that there was a growing trend towards ethnic tolerance in Chile, demonstrated by the recent signing of the Pact on Civic Respect by representatives of the Government, indigenous people and social and cultural sectors. Since Chile had a presidential form of government, statements made by the President were of great juridical and political importance, and the executive moreover had the power to issue decrees implementing policy decisions. Discriminatory policy decisions had been made in the recent past during the period of authoritarian military rule, but the Chilean authorities now intended to move further along the path towards respect and tolerance of the country's ethnic diversity.

29. It was true that the report did not contain sufficent detail regarding article 5 of the Convention, although some information, for example on measures taken to implement the Indigenous Act, had been provided in the previous day's oral presentation. He assured the Committee that more information would be provided in that regard; however, it should be noted that in Chile there were no norms or practices preventing people from enjoying the rights laid down in article 5. Equality before the law was a fundamental principle protected by the constitutional remedies of protection and habeas corpus.

30. Ms. ARAVENA (Chile) said that it was clear that the country's history of discrimination could not be eradicated overnight, but would require firm and long-term political will. She was particularly interested in the suggestion that indigenous participation in CONADI should be increased. At the most recent regular session of CONADI, a text had been prepared and sent for examination and approval by the Comptroller General of the Republic on an amendment to the system for electing indigenous councillors, which would serve as an indigenous electoral model for the whole country.

31. Regarding the question of indigenous lands, there had been widespread discrimination against indigenous people during the period of military dictatorship, when the agrarian reforms introduced by Presidents Frey and Allende had not been sustained. Indigenous lands had been at the mercy of logging companies, one example being the dispute between Mininco, a logging company, and the Mapuche people. As mentioned in the report, the restoration of democracy in 1990 had led to a change in State policy, of which the promulgation of the Indigenous Act was a clear example. Expropriation of land by the Chilean State was prohibited by the Constitution and therefore it was difficult to find a rapid solution to the long-standing problem of indigenous land rights. However, those rights were increasingly being recognized by the law; for example, indigenous land could not be transferred to any individual

unless he or she were also a member of an indigenous community. Progress was therefore being made in implementing the provisions of articles 2 and 5 of th Convention and the State had undertaken to see that land was exploited in a proper manner. CONADI, in coordination with the Ministry of National Resources, was the body responsible for implementing such measures. To date, a total of 82,506 hectares of land, with a value of $628 million, had been transferred to indigenous communities.

32. There were three main mechanisms for resolving di putes over the purchase of land. The first was provided for under article 20 (b) of the Indigenous Act. For example, the Mapuche people in Malleco and Arauco had made a claim to CONADI for restoration of their land, from which they had bee displaced when the military dictatorship had sold the land to a logging company. CONADI had studied that case and others and had established a procedure for restoring land to the Mapuche people; however, it took time for a decision to be made in such cases. In many other cases, the companies concerned refused to sell the land; a negotiation process had therefore been set up which had resulted in the purchase of some tracts of land by the State for restoration to indigenous people. To date, claims for 38,000 more hectares had been received, affecting 10,000 families. Those claims would be dealt with between 1999 and 2002.

33. The second mechanism related to the restoration of State-owned property through CONADI. To date, over 47,000 hectares of land had been restored to indigenous people and almost 55,000 more hectares were in the process of bei restored. Other areas of public land were being converted for use as ceremonial sites. The third mechanism related to subsidies for new applications for acquisition rather than restoration of land. Such applications were made through public bids which had not yet been quantified although resources would continue to be set aside for them. In the current year, 3,000 million pesos would be granted to 400,000 families for land acquisition.

34. Land was transferred to indigenous people free of charge. No definite figures were yet available for the total percentage of agricultural land transferred to indigenous people, but figures would be provided in the country's next report.

35. On the question of indigenous education and culture, it was through general education and intercultural education that in the long run Chile wou overcome any racial prejudices against indigenous citizens and foreigners. The Government had taken many steps to implement the Convention in that respect. Scholarships sponsored by CONADI and the Ministry of Education had improved access to education for about 48,000 indigenous young people, at a cost of over $15 million. For the first time, pilot programmes for bilingua intercultural education had been set up; they would be assessed at the end of 1999 and similar programmes would be extended to other schools in the country. The Government had also conducted eight linguistic studies on vernacular languages and methods of teaching them, and for three of those languages - Mapuche, Aymara and Rapa Nui, which until 1995 had had no offici system of writing - it had developed alphabets and grammars and trained 40 professors and student teachers. A comprehensive study had been done in 1995 on a revision of the school curriculum to include interculturalism a

bilingualism, bearing in mind the changes needed in rural education. Pilot projects had been designed for the teaching of indigenous languages as mother tongues. Since 1998, educational reforms, teaching methods and syllabuses appropriate to an urban setting had been developed; vernacular languages were being learned in the cities as second languages by both indigenous and non-indigenous pupils, and two pilot projects had been set up in the Santiago area. For 30 years a nationwide reform of general education had also been under way. As Chile entered the new millenium, the focus was on introducing the interculturalism and bilingualism that would equip it to eradicate any western ethnocentrism in its education and instil a greater respect for the indigenous cultures of the country, thereby creating a positive and tolerant attitude towards differences.

36. The Office of Indigenous Affairs in Santiago, in particular, was working for the advancement of the indigenous population in urban areas. As a result of its work, the culture and identity of urban indigenous people had been dignified and their economic advancement and the protection of their rights had been promoted, as had the restoration of their heritage.

37. The fact that many non-indigenous persons had falsely claimed to be indigenous in order to qualify for scholarships and benefits set aside for indigenous citizens, and that over 6,000 indigenous persons had applied for official recognition as such, showed that the policy of enhancing the image of the indigenous person was working.

38. Unlike other less geographically isolated Latin American countries, Chile had never seen a great influx of persons of African origin. The historical evidence was that about 3,000 Africans had come to Chile in colonial times, but a large percentage of them had died because of the climate and forced labour, or had emigrated to neighbouring countries, leaving only a small number in Chile, who had been absorbed into the Spanish population. As a result, there was currently no population of African origin in Chile going back to the slave trade, which explained why the report had been silent on the question. On the other hand, in May 1999, 14 visas had been granted to Africans from South Africa, Angola, Ghana, Kenya, Ethiopia and Nigeria, and there had been no indication of any incident of discrimination against them. In general, Chile rejected only between 2 and 3 per cent of requests for residence visas.

39. Mr. Yutzis, Vice-Chairman, took the Chair.

40. Mr. GARVALOV, referring to the delegation's statement that if any racist organization was discovered the case would be brought before the Constitutional Court, which would then decide on whether or not it should be banned, said that he wished to clarify the Committee's position on article 4 of the Convention, as set out particularly in General Recommendation VII and later in General Recommendation XV, from which he read out paragraphs 2 and 6. The provisions of article 4, especially article 4 (b), were mandatory; States should act against racist organizations at the earliest possible moment, before any actual incidents of racial discrimination or violence occurred.

41. Mr. Aboul-Nasr resumed the Chair.

42. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) expressed appreciation for the delegation's oral introduction and full answers to questions. Chile was to be commended for recognizing in its report that there was a problem of racial discrimination in the country, for having made the declaration under article 14, and for having incorporated the Convention into its domestic law. The Indigenous Act adopted in 1993 and the establishment of CONADI, which included indigenous representatives, were especially praiseworthy. The Government had clearly been making a serious effort on the crucial issue of restitution of indigenous lands, and the Committee would look forward to learning of further progress made, especially in view of the reported conciliation procedures, which were likely to be less lengthy than the legal system developed to deal with disputed claims. The Government had clearly devoted much attention also to promoting indigenous education. Constitutional recognition of the country's various ethnic groups had made great strides with the proposed constitutional reform bill pending in Congress. The Committee was also pleased that the Government intended to ratify International Labour Organization (ILO) Convention No. 169.

43. Due compliance was expected, however, with article 4 of the Convention, and both the Constitution and the Penal Code should be revised to include a prohibition of racial discrimination. The prohibition of totalitarian organizations in both the Constitution and the National Security Act should also be brought into line with article 4.

44. He appreciated the information given regarding court cases brought against Mapuches over land issues, especially in Araucanía, and had been pleased to learn that none were now in detention. He himself would make the information he had received on the question available to the delegation.

45. The CHAIRMAN, speaking as a member of the Committee, said that the two important questions he had raised, regarding an apology for past wrongs and regarding compensation for land, could be discussed in the next report.

46. Mr. WOLFRUM concurred that both issues were extremely important. It was a matter of concern to him that land seized from indigenous people by private industry had to be bought back by the Government and not simply expropriated and returned to the original, rightful owners, and he would appreciate an explanation. The Government's welcome change of attitude towards its indigenous population - outstanding in comparison to other countries - ought to be reflected in the Constitution.

47. Mr. YUTZIS asked for clarification in the next report as to whether the Constitution indeed stipulated that any crime against members of the military by a civilian was to be tried in a military court. The concern was timely because trials of Mapuches for such offences were currently being held in Chile and would soon reach the sentencing stage.

48. Mr. SALINAS (Chile) assured the Committee that all remaining questions would be answered in the next report of Chile.

49. The CHAIRMAN, thanking the delegation of Chile, said that the Committee looked forward to continuing its dialogue with the State party.

The meeting rose at 12.15 p.m.